IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2134 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPECIAL LAND ACQUISITION OFFICER - Appellant
Versus
PURSHOTTAMBHAI NARANBHAI & ANR. - Respondents

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Appearance:
MR SS PATEL for Appellant.
MR AJ PATEL for Respondent No.1.
None for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 19/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the respondent No.1.

Mr.S.S.Patel, learned Assistant Government Pleader for the appellant, states at the Bar that interest of the appellant and that of the respondent No.1 is common and not in conflict at all. Under the circumstances, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of the appeal upon the respondent No.2. Having regard to the facts of the case, the appeal is taken up for final disposal today.

2. By filing the instant appeal under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant has challenged legality of judgment and award dated October 11, 2004 rendered by the learned Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (R) at Navrangpura, in Land Acquisition Case No.1355 of 1996, by which the respondent No.1 is awarded additional compensation at the rate of Rs.84/- per square metre for his acquired land over and above compensation awarded by the Special Land Acquisition Officer at the rate of Rs.4.80 ps. per square metre.

3. The Executive Engineer, Narmada Project, Division No.13, Gandhinagar, proposed to the Government to acquire land of Survey No.113, admeasuring about 8448 square metres, belonging to the respondent No.1, which was situated in Village: Zundal, Taluka & District: Gandhinagar, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that Survey No.113 of Village: Zundal was likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Act was issued, which was published in the official gazette on January 11, 1990. The respondent No.1 was thereafter served with the notice as required by Section 4 of the Act. He objected to the proposed acquisition. After considering his objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the said report, the State Government was satisfied that the land of the respondent No.1 was needed for the public purpose of Narmada Canal. Therefore, declaration under Section 6 of the Act was issued, which was published in the official gazette on November 22, 1990. The respondent No.1 was

thereafter served with the notice for determination of compensation payable to him for his acquired land. He appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per square metre. However, the Special Land Acquisition Officer, by his award dated March 2, 1991, offered compensation to the respondent No.1 at the rate of Rs.4.80 ps. per square metre in view of the evidence led before him. The respondent No.1 was of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, he submitted an application in writing requiring the Special Land Acquisition Officer to refer his case to Court for the purpose of determination of just amount of compensation payable to him. Accordingly, the Reference was made to the District Court, Ahmedabad (Rural), which was registered as Land Acquisition Case No.1355 of 1996.

4. It may be mentioned that the respondent No.1 examined himself at Exh.20 whereas on behalf of the acquiring body, witness Mahendrabhai Vashrambhai Patel was examined at Exhibit 27. The respondent No.1 produced a copy of the previous award of the

Reference Court relating to the lands of this very village rendered in Land Acquisition Reference Case Nos.399 of 1991 to 405 of 1991 on July 16, 1999 in support of his claim for enhanced compensation. In the previous award, notification under Section 4(1) of the Act was published in the official gazette on December 3, 1985. The Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village was relevant for the purpose of determination of the market value of the land acquired from this very village subsequently. The learned Judge noticed that there was gap of about four years in notification issued under Section 4(1) of the Act and, therefore, the claimant was entitled to rise in price for his acquired land at the rate 10% per year. In the ultimate analysis, the Reference Court has awarded compensation to the claimant at the rate of Rs.88.80 ps. per square metre by award dated October 11, 2004, giving rise to the instant appeal.

5. This Court has heard the learned counsels for the parties at length and in great detail. This Court has also considered the documentary as well as oral evidence adduced by the parties before the

Reference Court.

6. Though it was claimed by the respondent No.1 in his testimony before the Court that the acquired land was highly irrigated and that he was earning net profit of Rs.15,000=00 per year per *vigha* from the sale of agricultural produces, no documentary evidence was produced in support of the said claim nor enhanced compensation was claimed on the yield basis. What was relied upon by the respondent No.1 in support of his claim for enhanced compensation was the previous award of the Reference Court relating to the lands of this very village. The previous award was produced on record at Exhibit 17. It indicates that the lands of Village: Zundal were acquired for the public purpose pursuant to the publication of notification under Section 4(1) of the Act on December 3, 1985. Therein the Land Acquisition Officer had awarded compensation to the claimant at the rate of Rs.2.50 ps. per square metre. Thereupon, the References were sought, which were registered as Land Acquisition Case No.399 of 1991 to 405 of 1991. The Reference Court by judgment dated July 16, 1999 awarded additional compensation to the claimant at the rate of Rs.60/- per square

metre. It may also be mentioned that the award rendered by the Reference Court in Land Acquisition Case Nos.399 to 405 of 1991 was challenged by the Special Land Acquisition Officer before the High Court in First Appeal Nos.3189 of 2000 to 3202 of 2000 and the appeals were dismissed by the High Court vide judgment dated November 29, 2000. Therefore, a copy of the judgment of the High Court delivered in First Appeal Nos.3189 of 2000 to 3202 of 2000 was produced by the claimant at Exh.18. A perusal of the judgment delivered in First Appeal No.3189 of 2000 to First Appeal No.3202 of 2000 would indicate that reliance was placed by the Court on the decision rendered in First Appeal Nos.3243 of 2000 to 3250 of 2000 decided by the Division Bench of this Court on November 14, 2000, pertaining to the lands of this very village. Therefore, a copy of the judgment rendered by the High Court in First Appeal Nos.3243 of 2000 to 3250 of 2000 was produced by the claimant at Exh.19. It is well settled that the previous award of the Reference Court relating to the lands of the same village, which has attained finality, can be relied upon for the purpose of determining market value of the lands acquired subsequently from that village. Under the

circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court rendered in Land Acquisition Case Nos.399 of 1991 to 405 of 1991, which was produced at Exhibit 17. Exhibit 17 indicates that notification under Section 4(1) of the Act was published on December 3, 1985 whereas in the instant case notification under Section 4(1) of the Act was published on January 11, 1990 and in view of the time gap of four years, the claimant would be entitled to reasonable rise in price of land at the rate of 10% per annum. If so calculated, the claimant would be entitled to compensation at the Rs.87.50 ps. and not Rs.88.80 ps., as held by the Reference Court, and to that extent, the award passed by the Reference Court will have to be modified.

For the foregoing reasons, the appeal is partly allowed. It is held that the respondent No.1 shall be entitled to total compensation at the rate of Rs.87.50 ps. per square metre for his acquired land and not at the rate of Rs.88.80 ps. per square metre, as held by the Reference Court. Other directions given by the Reference Court in the

impugned judgment are hereby upheld. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra